

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ANTHONY A. WHITEHURST	§	
VS.	§	CIVIL ACTION NO. 1:06-CV-380
RUDY CHILDRESS, ET AL.	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff Anthony A. Whitehurst, a former prisoner, proceeding *pro se* and *in forma pauperis*, brought this civil rights action against Rudy Childress, Kenneth Everhart, James Premo, Marquez, Mack, and Bradley.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

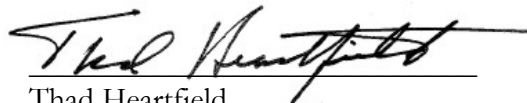
The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

Plaintiff's discrimination claim is frivolous and fails to state a claim upon which relief may be granted because plaintiff has not demonstrated that the defendants singled him out for disparate treatment for the purpose of causing an adverse effect on an identifiable group. *Priester v. Lowndes County*, 354 F.3d 414, 424 (5th Cir. 2004); *Taylor v. Johnson*, 257 F.3d 470, 473 (5th Cir. 2001). The defendants' failure to follow prison regulations, rules or procedures does not rise to the level of a constitutional violation. *Stanley v. Foster*, 464 F.3d 565, 569 (5th Cir. 2006); *Balli v. Haynes*, 804 F.2d 306, 308 (5th Cir. 1986). Finally, the court declines to exercise supplemental jurisdiction over plaintiff's malicious prosecution claim. *See* 28 U.S.C. § 1367(c).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case.

SIGNED this the **27** day of **March, 2007**.


Thad Heartfield
United States District Judge